IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

WP(C).No. 25842 of 2006(B)

PETITIONER:

BHARATHIAMMA, D/O. KALLIANIAMMA,
THACHETTU HOUSE, MANAKKADU VILLAGE,
THODUPUZHA.

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENT:

THE SPECIAL TAHSILDAR (LA)
THODUPUZHA.

BY GOVERNMENT PLEADER SRI.S.DILEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONER DATED 14.5.2005.

EXT.P2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 29.6.2005.

EXT.P3: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 29.7.2005.

EXT.P4: COPY ON THE FILE OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 19.8.2005.

EXT.P5: COPY OF THE INTIMATION SENT BY THE 1ST RESPONDENT DATED 9.12.2005.

EXT.P6: COPY OF THE REPRESENTATION SENT BY THE PETITIONER TO THE RESPONDENT DATED 3.1.2006.

(TRUE COPY)

P.A. TO JUDGE

K.T.SANKARAN, J

W.P.(C). No. 25842 of 2006

Dated this the 2nd day of January, 2007

JUDGMENT

The petitioner, who according to her is an illiterate woman, aged about 75 years was not satisfied with the amount awarded by the Land Acquisition Officer, while the petitioner's land was acquired for the construction work of Thodupuha Bye-pass road. The amount of compensation was directly paid to the Punjab National Bank, Thodupuzha branch, since the bank had mortgage rights over the property belonging to the petitioner. On 29.6.2005 as per Ext. P2, the petitioner made her protest. On 29.7.2005, the petitioner submitted Ext. P3 application to the Land Acquisition Officer stating that the compensation awarded is inadequate and that the case requires to be referred under Section 18 of the Act to the Land Acquisition Court. It is admitted in the counter affidavit that Ext. P3 was received by the Land Acquisition Officer and that Ext. P3 application, if taken as an application under Section 18 of the Act was filed well within the prescribed period of limitation. By way of abundant

caution, the petitioner filed Ext. P4 application for reference in Form 22A appended to the rules. That application was filed on 19.8.2005. Ext. P4 application is not within the prescribed period of limitation. The Land Acquisition Officer rejected the application for reference by Ext. P5 order on the ground of limitation.

2. Since there is no dispute that Ext. P3 was filed within time, I am of the view that Land Acquisition Officer was not justified in rejecting the prayer of the petitioner to make a reference. In Antony V. State of Kerala (2005 (1) KLT 583), a Division Bench held that a letter written by the owner of the land stating that the amount of compensation awarded is low, could be treated as an application for reference under Section 18 of the Act. In Jameson V. State of Kerala (2006(3) KLT 186), it was held that Rule 16A of the Land Acquisition (Kerala) Rules to the extent to which it provides that an application should be filed in Form 22A for reference to court, is ultra vires the Land Acquisition Act. It was held as follows:

> Since S.18 of the Land Acquisition Act does not provide for any form in which an application for reference is to be made, it is to be taken that an

application for reference could be submitted in any form the claimant likes, provided that necessary ingredients to constitute a request for reference are made out in the application. It is true that the Land Acquisition (Kerala) Rules provides for submission of an application for reference in Form 22A as provided under R. 16A. S.55 of the Land Acquisition Act states that the appropriate Government shall have power to make rules consistent with the Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made. The rule making power of the appropriate Government does not extent to insisting on a particular form of application for reference, since it would be against the provisions of S. 18 of the Act. Sub-s(2) of S.18 provides that the application for reference shall state the grounds on which objection to the award is taken. Column 8 in Form 22A specifies that requirement. The other columns in Form 22A are the following: Name and address of the applicant, Land Acquisition Case number, Award number and date of award, amount of compensation awarded, date of receipt of notice of award in Form No. 10(b) by the applicant, date of receipt of compensation by the applicant, whether the compensation amount was received under protest or not; and if the application is under sub-s(3) of S.28A the details regarding (1) number and date of Award under sub-s.(2) of S.28A of the Act, (2) whether the compensation was re-determined, (3) whether protest was recorded on the decision of the Collector, and (4) grounds on which the objection to the Award is filed. Column 9 provides for the details to be furnished in an application under sub-s(3) of S. 28A. Even if an application for reference does not conform to Form 22A, it cannot be said that the application for reference is defective, since the rule making authority has no power to prescribe for such a form in view of the specific provisions in S. 18 of

> the Act. S.55 of the Act enjoins the Rule making authority to make rules for the guidance of officers. R.16-A to the extent to which it provides that an application should be filed in Form 22-A for reference to Court, is ultra vires the Land Acquisition Act. The Rule making power under S.55 does not empower the Government to make such a Rule.

3. In view of the decisions mentioned above, there can be no doubt that Ext. P3 application is a proper application, seeking reference under Section 18 of the Act. The respondent shall treat Ext. P3 as the application for reference and shall refer the matter to the court having jurisdiction within a period of two months from the date of receipt of a copy of the judgment.

The Writ Petition is allowed as above.

K.T.SANKARAN,
JUDGE

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